### NCO 4 Guide for VHA DIRECTIVE 2011-036

VHA Directive 2011-036 SAFETY AND HEALTH DURING CONSTRUCTION, effective September 22, 2011, <a href="http://vaww1.va.gov/vhapublications/ViewPublication.asp?pub\_ID=2448">http://vaww1.va.gov/vhapublications/ViewPublication.asp?pub\_ID=2448</a> applies to all construction activities performed at VHA owned or leased facilities regardless of whether performed by VHA or contractor staff. This guide addresses Section 4.n.(7) in which Contracting Officers are to evaluate and consider past safety records of bidders/offerors prior to award. The requirement is a pass/fail; therefore, it is not required to be a technical evaluation factor in RFPs unless it is critical to the acquisition.

#### 1. SOLICITATION INFORMATION

a. All solicitations must contain the following verbiage under "INFORMATION TO BIDDERS/ OFFERORS" section of the solicitation:

## Safety or Environmental Violations and Experience Modification Rate

"All Bidders/Offerors shall submit the following information pertaining to their past Safety and Environmental record. The information shall contain, at a minimum, a certification that the bidder/offeror has no more than three (3) serious, or one (1) repeat or one (1) willful OSHA or any EPA violation(s) in the past three years.

All Bidders/Offerors shall submit information regarding their current Experience Modification Rate (EMR) equal to or less than 1.0. This information shall be obtained from the bidder's/offeror's insurance company and be furnished on the insurance carrier's letterhead.

Self insured contractors or other contractors that cannot provide their EMR rating on insurance letterhead must obtain a rating from the National Council on Compensation Insurance, Inc. (NCCI) by completing/submitting form ERM-6 and providing the rating on letterhead from NCCI. Note: Self insured contractors or other contractors that cannot provide EMR rating on insurance letterhead from the states or territories of CA, DE, MI, NJ, ND, OH, PA, WA, WY, and PR shall obtain their EMR rating from their state run worker's compensation insurance rating bureau.

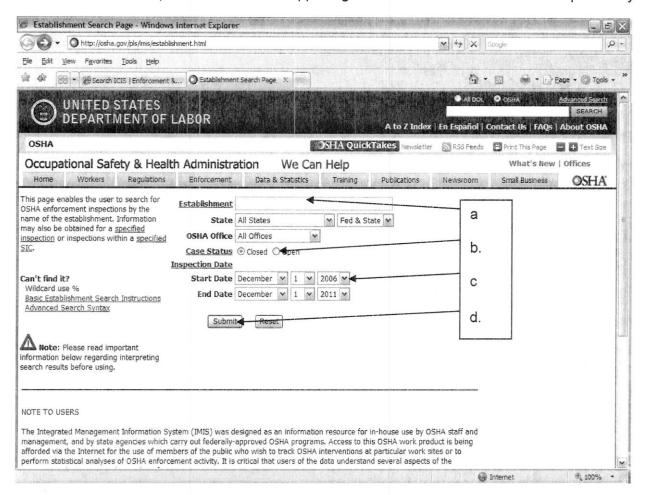
A *Determination of Responsibility* will be accomplished for the apparent awardee prior to processing the award. The above information, along with other information obtained from Government systems, such as the OSHA and EPA online inspection history databases will be used to make the *Determination of Responsibility*. Failure to affirm being within the guidelines above or submit this information will result in a determination of "Non-Responsibility" for the bidder/offeror. NOTE: Any information received by the Government that would cause for a negative *Determination of Responsibility* will make the bidder/offeror ineligible for award.

This requirement is applicable to all subcontracting tiers, and prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. "

b. It is recommended that Contracting Officers brief this requirement in Pre-Solicitation Site visits and Post-Award, Pre-Construction meetings.

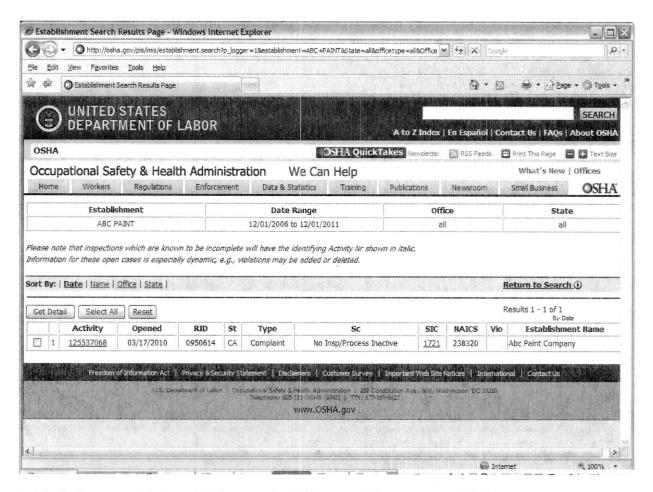
#### 2. PRE-AWARD CONTRACTOR RESPONSIBILITY

- <u>STEP 1</u> Contracting Officers shall verify safety violations of not more than three (3) serious, or one (1) repeat or one (1) willful Safety violation(s) in the past three years by verifying on the OSHA website <a href="http://osha.gov/pls/imis/establishment.html">http://osha.gov/pls/imis/establishment.html</a>. At the website, follow these steps (see screen below)
- a. Type in the name of the apparent awardee under "Establishment" and verify the name and address match. This site is sensitive to Name format, so partial names may be necessary to obtain sufficient data. i.e. "ABC" rather than "ABC Inc" or "ABC Incorporated" or "ABC Co."
- b. Select "CLOSED" radio button under "Case Status" (OPEN cases may be reversed).
- c. Change year under "Start Date" to 3 year from the current date (i.e. change Dec 1, 2006 to Dec 1, 2008) to obtain violations in last 3 years.
- d. Select Submit and print out results for supporting documentation for Contractor Responsibility.



After selecting "Submit" the following screen on the next page will appear.

e. After submitting, results will show in format below: (sample "ABC PAINT")



- f. Verify the search is for all Offices and all States and there are no violations.
- g. Additional information can be obtained by selecting the "Get Detail" (SAMPLE BELOW)
- h. Verify there are no Violations. If there are more than 3 serious, or 1 repeat, or 1 willful violation, the CO will determine the apparent awardee not responsible.



<u>STEP 2 – Per consultation with Environmental policy writers of VHA Directive 2011-036 SAFETY AND HEALTH DURING CONSTRUCTION, Contracting Officers will rely on Excluded Parties List System (EPLS) for environmental (EPA) violations. If further research is desired, the CO may check the EPA website <a href="http://www.epa-echo.gov/echo/compliance\_report\_icis.html">http://www.epa-echo.gov/echo/compliance\_report\_icis.html</a>.</u>

<u>STEP 3 -</u> Contracting Officers review bidder's/offeror's documentation of the EMR from their insurance carrier on official letterhead to determine contractor responsibility. This is a pass/fail requirement, so if the EMR is less than or equal to 1.0 the CO will determine the bidder/offeror responsible for this element.

#### 3. DOCUMENTATION

In order for the CO to make a determination that the bidder/offeror is responsible IAW with VHA Directive 2011-036, the contractor must pass all three steps. Ensure documents are uploaded to eCMS attached to the Contractor Responsibility Determination (see SOP Responsibility Determination Attachment 1).

# 4. POST AWARD - SUBCONTRACTOR SAFETY AND ENVIRONMENTAL VIOLATIONS & EMR

This directive is applicable to prime contractors and all subcontracting tiers. IAW FAR 9.104-4 Subcontractor Responsibility Matters, prospective contractors are responsible for determining the responsibility of their prospective subcontractors. After award, prime contractors are responsible for ensuring subcontractors have no more than three (3) serious, one (1) repeat or one (1) willful OSHA or any EPA violation(s) in the past three years and EMR equal to or less than 1.0. COs are not responsible for verifying subcontractors, but may if there is a safety or environmental concern.

# OPTIONAL SAMPLE FORM FOR BIDDER/OFFEROR TO COMPLETE & SUBMIT WITH BID/PROPOSAL (FROM CFM WEBSITE)

## **Pre-Award Contractor Evaluation Form**

Company Name:				
Address:		-		
Telephone: Fax:				
Email:				
Contact:				
1. Utilizing your OSHA 300 Forms, please complete the following	ng information	on:		
Category	2008	2009	2010	2011
Number of man hours (jobsite and office).				
Number of cases involving days away from work, restricted activity, or both (Column H and I of OSHA 300).				
Days away, restricted, or transferred rate (# of days away, restricted, or transferred cases x 200,000/# of man hours) (DART Rate).				
Number of serious, willful, or repeat violations from OSHA within the last 3 years. Please attach explanation for any violations. (Four serious, one repeat, or one willful disqualifies the contractor.)				
Please attach copies of the following documents: OSHA 300 a accessed through the OSHA publications search page: http://www.osha.gov/pls/publications/publication.html.	and 300a Fo	rms. Thes	e forms ca	in be
Provide your six-digit North American Industrial Classification acquisition:	on System (	NAICS) Co	de for this	
Who administers your company's Safety and Health Progra	am?			
4. Company's Insurance Experience Modification Rate (EMR)	for the past	3 years (a	ın EMR of	greater
than 1.0 disqualifies the contractor):				